



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA060079

Petitioner, Ruth Malloy applied to the Board of Appeals for zoning relief to construct new single family residence which will require the demolition of the existing dwelling at 92 Fairway Road.

On November 16, 2006, the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed January 25, 2007, at 7:00 p.m. in the Selectmen's Hearing Room on the sixth floor of the Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published January 4 and 11, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **RUTH MALLOY**

Location of Premises: **92 FAIRWAY ROAD BRKL**

Date of Hearing: **01/25/2007**

Time of Hearing: **07:00 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6th. Floor**

A public hearing will be held for a special permit and/or variance from:

- 1) 5.09.2.a; Design Review, Special Permit Required and**
- 2) 5.30; Maximum Height of Buildings; Variance Required** of the Zoning By-Laws to construct a new single-family residence per plans at **92 FAIRWAY ROAD BRKL.**

Said Premise located in a **S-15** District.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, a public hearing was held by this Board. Present at the hearing was Chair, Diane Gordon and Board members Enid Starr and Lawrence Kaplan. Ruth Malloy and her husband Donald, owners of the subject property, presented the case before the Board.

Mrs. Malloy described the project as the demolition of the existing single family home and detached garage and the construction of a colonial style single family home with garage under. The new home would be more in keeping with the size and style of the neighborhood and better meet the needs of their family. She stated that the Building Department had denied their building application based on the requirement for Design Review and a potential height issue. Mrs. Malloy stated that an engineer re-certified the height of the home and it is in compliance with the by-law and that they worked with the Planning Department on Design Review issues. She stated that she understood the recommended

conditions of the Planning Board and had no issues with them. Mrs. Malloy stated that in accordance with the demolition by-law, a Certificate on Non-Significance was issued for the structures on the lot on March 14, 2006 by the Brookline Preservation Commission.

The Chair then asked whether anyone wished to speak in favor or opposition. No-one appeared.

Planner, Lara Curtis, then reviewed the comments and recommendations of the Planning Board: She stated that the applicant wishes to demolish the single-family dwelling and build a new single-family dwelling. The new single-family dwelling would be two-and-a-half stories tall and have an attached two-car garage below the dwelling's first floor. The plans indicate the dwelling would have approximately 3,922 s.f. in floor area, as well as an unfinished basement and attic. The exterior of the building would be finished in simulated cedar siding. The proposal requires design review because the rear of the property fronts onto Boylston Street. Ms. Curtis outlined the relief required as follows:

Section 5.09.2.a – Design Review

Since the property fronts on Boylston Street, a special permit is required to build a new residential structure. The applicant has not submitted an impact statement discussing how this project relates to those standards. The most relevant sections are described below:

- a. *Preservation of Trees and Landscape*: Most trees on the lot are located to the rear of the proposed dwelling, on the portion of the lot that slopes up toward Boylston Street. The grade of the lot currently inclines gradually initially from the road, and then more rapidly towards Route 9. This grade would largely remain the same, except for a new retaining wall and driveway to provide access to the basement-level garage.
- b. *Relation of Buildings to Environment*: The proposed dwelling would be located similarly on the lot as other dwellings along Fairway Road. Additionally, the proposed dwelling, which would be two-and-a-half stories high, would be similar in style and height as other dwellings along Fairway Road, which are typically two- to three-stories high.

Section 5.30 – Maximum Height of Buildings

The applicant was initially cited as requiring a variance for exceeding the 35 feet height limit. The initial plans submitted by the applicant indicated an average grade of 187 and a total building height of at least 36.5 feet. The applicant has since submitted revised survey and architectural plans indicating an average grade of 189 feet and a building height of 34.5 feet in order to comply with the By-law's requirements. Those plans are attached to this report. Please see table below.

	<u>Allowed</u>	<u>Proposed</u>	<u>Finding</u>
Initially Proposed Height	35 feet	36.5 feet	Variance

Revised Proposed Height	35 feet	34.5 feet	Complies
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Ms. Curtis stated that the Planning Board is not opposed to this proposal to construct a single-family dwelling on the subject property. The dwelling is similar in placement and in scale to other dwellings in the surrounding neighborhood, and the plans for the dwelling have been revised to comply with the dimensional requirements of the Town's Zoning By-law. The Planning Board is concerned about the preservation of the existing garage as part of this proposal due to its close proximity to the new dwelling and the oversized curb cut. Should the applicant decide to retain the garage, the applicant shall return to the Planning Board to demonstrate additional zoning relief is not needed.

Therefore, the Planning Board recommends approval of the plans entitled "The Malloy Residence," prepared by Dilullo Associates Inc., and last dated January 3, 2007, and the accompanying site and grading plans, prepared by Bradford Engineering Co., and last dated December 14, 2006, indicating an average grade of 189 and a building height of 34.5 feet, subject to the following conditions:

1. Prior to issuance of a building permit, the applicant shall return to the Planning Board with a plan for the removal, rebuilding, restoration or relocation of the existing garage as a shed, with the revision of the site plan showing a reduction in the curb cut. In the alternative, the applicant may remove the garage and waive the prior Board of Appeals decision, case no. 1178.
2. Final siding materials shall be subject to the review and approval of the Assistant Planning Director for Regulatory Planning, except the siding may not be vinyl.
3. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing dimensions and grade stamped and signed by a registered land surveyor; 2) final elevations showing dimensions, including height, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chair called on Frank Hitchcock representing the Building Department. Mr. Hitchcock stated that all the relief required was for Design Review, §5.09.2.a. He outlined the reason for Design Review and referred to the plan of record regarding the building height. He stated that the Building

Department had no objections to the proposal, the relief required or the conditions recommended by the Planning Board.

The Chair then asked Mrs. Malloy if she wished to make a closing statement and she declined.


The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a Special Permit in accordance with **Section 5.09.2.a**, of the Zoning By-law and makes the following findings pursuant to **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1 The existing detached garage will be removed from the property prior to the issuance of a Certificate of Occupancy for the new home.**
- 2 Final siding materials shall be subject to the review and approval of the Assistant Planning Director for Regulatory Planning, except the siding may not be vinyl.**
- 3 Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing dimensions and grade stamped and signed by a registered land surveyor; 2) final elevations showing dimensions, including height, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**


Unanimous Decision of
The Board of Appeals


Diane R. Gordon

Filing Date: February 02, 2007

A True Copy:

ATTEST



Patrick J. Ward
Clerk, Board of Appeals

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TOWN CLERK

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